

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO. 168 of 2019

- 1) Smt. Shilpa Nikanthrao Shirke )  
Age 40 years, R/at. 2/20, Purandar, )  
Gokhalenagar, Pune-411016. )...Applicant

**Versus**

- 1) The State of Maharashtra, )  
Through the Principal Secretary )  
Medical Education and Drugs Dept., )  
Mantralay, Mumbai- 400 032. )
- 2) The Director, )  
Gokuldas Tejpal Hospital, )  
Lokmanya Tilak Road, Mumbai. )
- 3) The Dean, Sasson Hospital, Pune )  
Jaiprakash Narayan Road, )  
Near Railway Station, Pune-411 001 )...Respondents

Smt. Punam Mahajan, learned Advocate for the Applicant.  
Shri A.J. Chougule with Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 22.03.2019

**ORDER**

1. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Shri A.J. Chougule with Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.
2. In the present matter, the Applicant is challenging the suspension order dated 20.11.2018 whereby he was kept under suspension in contemplation of D.E. invoking the Rule 4(1)(a) of the Maharashtra Civil Services (Discipline &

*W. K. Kumbhar*

Appeal) Rules, 1979. The Applicant contends that though the period of more than four months from the date of suspension is over, the Disciplinary Authority has not taken review of the suspension as contemplated in G.R. dated 14.10.2011. He further contends that the suspension beyond 90 days is illegal in view of the judgment of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)**.

3. During the course of hearing, learned Advocate for the Applicant has pointed out that the charge-sheet in D.E. has been served upon the Applicant on 11.03.2019 but there is no further progress in D.E..

4. Perusal of charge-sheet reveals that the D.E. has been initiated against the Applicant for not obeying the orders passed by the Superiors amongst other grounds.

5. Now, turning to G.R. dated 14.10.2011, the Disciplinary Authority was required to take review of the suspension periodically. As per, Clause 7(a) of G.R., the Disciplinary Authority was obliged to take review of the suspension firstly after three months from the date of suspension and to take the decision about reinstatement of the Government servant in service. It further provides that in case, the D.E. is not contemplated within six months, the Government servant can be reinstated in service by giving posting on non-executive post.

6. It would be apposite to reproduce Para Nos.11, 12 and 21 of the judgment of the Hon'ble Supreme Court in **Ajay Kumar Choudhary's case**, which are as follows :

*"11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.*

**12.** *Protracted period of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanar, indiscretian or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that – "We will sell to na man, we will not deny ar defer to any man either justice ar right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.*

**21.** *We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memarandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any lalacal or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Gavernment may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepared his defence. We think this will adequately safeguard the universally recognized principle af human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that the previous Canstitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction af the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."*

7. As such, as per the law laid down by the Hon' ble Supreme Court, the Disciplinary Authority is under obligation to decide about revocation of the suspension after filing of charge sheet in D.E. which has been served upon the Applicant on 11.03.2019. Therefore, the Disciplinary Authority is now required

to consider the said issue. Besides the D.E. also needs to be completed within six months from the date of suspension.

8. In view of above, the O.A. can be disposed of with suitable directions. Hence the following order.

**ORDER**

- (a) The O.A. is allowed partly.
- (b) Respondent No.2 is directed to take decision about the revocation of suspension of the Applicant in view of filing of charge sheet in D.E. in the light of observation made by the Hon'ble Supreme Court in Ajay Kumar Choudhary's case and to take appropriate decision within four weeks from today.
- (c) The decision, as the case may be, be communicated to the Applicant within one month thereafter.
- (d) The Respondent No.2 is further directed to complete the D.E. by passing final order therein within four months from today in accordance to rules.
- (e) The Applicant is also directed to co-operate for expeditious conclusion of D.E.
- (f) No order as to costs.

Sd/-

(A.P. KURHEKAR)  
MEMBER (J)